IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14318 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUNWANTRAI M VAIDYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14318 of 1993

MR PV HATHI for Petitioner No. 1

MR BY MANKAD, AGP for Respondent No. 1

NOTICE SERVED for Respondents No. 2-3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 18/01/2002

ORAL JUDGEMENT

1. Gunwantrai M.Vaidya, petitioner has filed this petition with a prayer to quash and set aside the order

dated 26th November, 1992, passed by Secretary, Panchayat & Rural Housing Development Department - respondent No.1 herein and consequent order dated 1st February, 1993, passed by the District Panchayat, Junagadh - respondent no.2 herein by declaring the same as illegal, unconstitutional.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner after having joined as Junior Clerk in 1951 was promoted as Senior Clerk and Accountant in 1958 and worked on those posts till 1981. On 25.8.81 petitioner was promoted as Taluka Development Officer and served in various talukas in Jamnagar, Kachchh and Junagadh Districts. His service record is clean and unblemished and had received no adverse remarks or departmental proceedings in his long service of 37 years.

2.2 In 1985-86 the petitioner was working as Taluka Development Officer at Visavadar in Junagadh District and rendered useful service in normal and scarcity times and his services were highly appreciated by the District Development Officer, Junagadh, by the letter dated 23.5.86 and 20.6.86 which are produced by the petitioner in this behalf.

2.3 On 28.6.88 just two days before reaching the age of superannuation on 30.6.88, the Deputy Secretary, Panchayat & Rural Development Department had issued a chargesheet against the petitioner alleging certain irregularities particularly about 11 charges which has been stated in the chargesheet.

2.4 The petitioner filed his reply after inspecting and verifying the old record and pointed out that he was not responsible for the said irregularity and he was merely administrative head and the work was in charge of the technical engineering staff and that he was also heavily burdened with the work of administration at Visavadar Panchayat and had to work large part of days in this behalf. The reply has been filed on 29.12.89 which has been produced at Annexure `C' to the petition.

2.5 The Inquiry Officer prepared a note dated 29.12.90 who conducted the enquiry where no evidence was led and the proceedings conducted on the basis of the disciplinary rules of 1971 eventhough the petitioner had retired on 30.6.1988.

2.6 The Panchayat and Rural Department by the

communication dated 11.2.91 called upon the petitioner to file explanation to the said report within 15 days. The said letter did not mention anything about the reduction of pension as provided by Rule 189-A of the Bombay Civil Services Rules (hereinafter referred to as `the BCSR Rules'). The petitioner filed his explanation to the said letter dated 7.3.91.

2.7 The State Government imposed penalty of reduction of pension of Rs.200/- p.m. for a period of three years under Rule 189-A of the BCSR Rules. The said order has been passed on 26.11.92 which has been produced at Annexure `F' on page 33 to the petition.

2.8 Being aggrieved and dissatisfied with the said order, the petitioner has filed this petition somewhere on 21st December, 1993, and this Court issued notice and ultimately matter was admitted and interim relief was also granted by this Court on 19.4.94.

3. Mr.P.V.Hathi, learned advocate for the petitioner has raised following contentions before me at the time of hearing of this petition.

(1) The impugned order dated 26.11.92 is without jurisdiction having been passed under the disciplinary rules, which rules have ceased to apply to the petitioner as he retired on 30.6.1988 and that no notice was issued to the petitioner about reduction of pension of the petitioner.

(2) Even assuming that the power under Rule 189-A can be exercised it was incumbent upon the respondent to issue notice and was required to give an opportunity to the petitioner before passing the impugned order of reduction in pension (see letter dated 11.2.1991 Annexure-E, page 32) and, therefore, the order is passed in breach of the principles of natural justice.

(3) The impugned order is passed on mere suspicion and conjectures, where no evidence was led by the department to show that the petitioner was alone responsible for the so-called technical irregularities in respect of the work carried out by the contractor and the said order does not deal with the facts and figures given by the petitioner in order to show that he could not have been made responsible for the technical lapses committed by other engineers.

(4) The order (Annexure-F) is a non-speaking order and no findings are arrived at by the disciplinary authority independently after considering the detailed reply of the petitioner.

(5) The impugned order is otherwise unreasonable and unjust inasmuch as the petitioner having earned high appreciation of his work and after having clean record of 37 years in different cadres including that of the Accountant, there was no justification to impose penalty of reduction in pension on the enquiry commenced which is two days before his retirement.

(6) Even assuming that he was rightly found guilty, the penalty as imposed is excessive and is disproportionate to the charges levelled against him.

4. Out of all the six contentions he submitted that this petition is of 1993 and petitioner has already retired from service and therefore without raising other contention in the petition he has pressed the last contention and stated that in view of the fact that petitioner had served the department for 37 years and chargesheet was issued only two days prior to his retirement and he has already retired in 1988 and this matter has been taken up in 2002, no useful purpose would be served in deciding the matter but if penalty imposed by the department may be reduced then it will meets the ends of justice. In support of the same he has relied upon the judgment of this Court in the case of KALUSINH GAMALSINH VS. DEPUTY SECRETARY, HOME DEPARTMENT & ANR. REPORTED IN 34(2) GLR 1278. In that case the learned Single Judge in para 7 considered the judgment of the Hon'ble Apex Court in the case of Ex-Naik Sardar Singh Vs. Union of India & Others reported in 1991(3) SCC 213 and thereafter again considered the judgment of the Hon'ble Apex Court in the case of Ranjit Thakur Vs. Union of India reported in 1987(4) SCC 611. After considering the said judgments in para 8 the Court has considered the matter and in para 9 in facts and circumstances of the case the learned Judge has reduced the penalty in this behalf which reads as under:

"Para.8 The aforesaid observations make it abundantly clear that the approach of the Disciplinary Authority while imposing punishment should be rational and reasonable. Every

misconduct does not call for a severe penalty of dismissal or removal. The nature of misconduct is to be kept in mind while imposing the penalty. The right to impose penalty carried with it the duty to act justly. The penalty imposed must be commensurate with the gravity of the misconduct and any penalty disproportionate to the gravity of the misconduct would be violative of Art.14 of the Constitution of India. Oscar Wilde's dictum, "MODERATION IS A FATAL THING. NOTHING SUCCEEDS LIKE EXCESS" cannot be accepted in the present day context in the country wedded to the principle of equality before the law in the matter of employment. There must be graded punishment for graded misconduct because that penalty is just which fits the misconduct and does not suffer from undue mitigation or immoderate exaggeration."

"Para.9 In view of the aforesaid observations, it is necessary for this Court to examine as to whether the penalty imposed by the competent authority can be said to be reasonable, rational and in proportion to the misconduct committed by the petitioner-delinquent. It is required to be noted that the misconduct was committed while the petitioner was in service. It is also true that the misconduct cannot be viewed leniently and that too for an officer serving in the police force. At the same time, it shall have to be kept in mind that the employee is already out of employment as he has retired from service. There is no possibility of his repeating the misconduct and therefore impugned penalty cannot be said to have preventive objective. This penalty has, even no deterrent effect so far as the employee is concerned. The employee is simply required to be reminded of the lapses committed by him and that reminder can be given by deduction of token amount from his pension. I, therefore, view the penalty in this case as one which actually has no deterrent or preventive effect, vis-a-vis, the employee. It serves the purpose of setting up an example or teaching a lesson to class of erring employees and thereby restores and satisfies the ego of the employer that an erring employee is not permitted to go scot free despite his retirement. The employer thereby establishes that his writ or whip runs even beyond retirement. Such a punishment should not be harsh and excessive. In my view, depriving

retired Head Constable of the amount of Rs.75/-p.m. from pension for a period of five years would work too harsh and excessive and hence unreasonable in the present day of rising prices.

4.1 Learned advocate for the petitioner has also relied upon the judgment of this Court in the case of KOLI KALAJI JAMAJI AND OTHERS VS. STATE OF GUJARAT AND OTHERS REPORTED IN 2001(3) GLH 458 after relying upon the judgment of the Hon'ble Supreme Court in the case of M/s.Hindustan Steel Ltd. Vs. The State of Orissa reported in AIR 1970 SC 253 in para 4.1 and 5 this Court has observed as under:

"Para.4.1 He has also relied on the judgment of the Supreme Court in the case of M/s.Hindustan Steel Ltd. Vs. The State of Orissa reported in AIR 1970 SC 253 in which at para 7 on page 256 the Hon'ble Supreme Court observed as follows:

"But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, where there is a technical or venial breach of the provisions of the Act or where the breach flows from bonafide belief that the offender is not liable to act in the manner prescribed by the statute."

"Para.5 In view of the aforesaid two decisions of the High Court and the Supreme Court, he has stated that the authority ought not to have imposed penalty because the conduct of the petitioner is not contumacious and there is not wilful disregard of the liability by the

petitioner. He has also stated that the order of the authority is contrary to and inconsistent with the judgment of the Hon'ble Supreme Court in Hindustan Steel Ltd.'s case (supra) and this Court in Vithalbhai's case (supra)."

4.2 In view of the same he submitted that penalty amount may be reduced in this behalf.

5. Shri B.Y.Mankad, learned AGP for the State has tried to support the order of the authority in this behalf and stated that in any view of the matter the order should be maintained in this behalf.

6. I have considered the judgments of this Court in Kalusinh Gamalsinh (supra) and also Koli Kalaji Jamaji (supra) in this behalf. I have also considered the facts and circumstances of the case and in this matter also the person has already retired on 30th June, 1988, and the chargesheet was issued only on 28th June, 1988, just two days prior to his retirement. He has completed 37 years service without any memo and the charges which have been levelled against him. There is is not a serious charges particularly financial allegation. In view of the peculiar facts and circumstances of the case when the authority has imposed penalty reducing the pension Rs.200/p.m. for a period of three years i.e. the reduction which comes to Rs.7200/- is too harsh. In my view punishment for serious misconduct there must be a heavy punishment. I agree with the ratio of Kalusinh and hold that there must be graded punishment for graded misconduct. In view of the same a token penalty is imposed and the same is the interest of justice. So in view of this peculiar facts and circumstances of the case, I reduce the pension of Rs.100/- per month for 1 1/2 (one and half year) i.e. comes to Rs.1800/- only instead of Rs.7200/-. In view of the same, the petition is accordingly disposed of with no order as to costs. Rule is made absolute to the aforesaid extent.

(K.M. Mehta, J.)

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